

**COMMONWEALTH LAWYERS ASSOCIATION
COMMONWEALTH LEGAL EDUCATION ASSOCIATION
COMMONWEALTH MAGISTRATES' AND JUDGES' ASSOCIATION
COMMONWEALTH PARLIAMENTARY ASSOCIATION**

**SUBMISSION ON THE IMPLEMENTATION OF
THE COMMONWEALTH (LATIMER HOUSE) PRINCIPLES**

The following is a submission made on behalf of the Latimer House Working Group to the Commonwealth of the Whole (COW) and to Heads of Government Meeting in Kigali, Rwanda in June 2022.

EXECUTIVE SUMMARY

2023 will mark the 25th anniversary of the adoption of the Commonwealth Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence and the 20th Anniversary of the Commonwealth (Latimer House) Principles on the Accountability of and Relationship between the Three Branches of Government. The four associations, who have been members of the Latimer House Working Group since its creation in 1998, are concerned that, despite their work in advancing the Principles, there continue to be challenges in the implementation of the Principles across the Commonwealth and that respect for the Commonwealth fundamental values has been eroded since the adoption of the Commonwealth (Latimer House) Principles. The implementation of the fundamental values of: *“democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government; fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief”* as outlined in the Harare Declaration of 1991 and which are essential for good governance in the Commonwealth are a road-map for Commonwealth countries to ensure the rule of law and good governance are respected by all institutions and that each institution is accountable for its actions and respects the independence and integrity of the other organs of state. The Associations suggest:

- a review of the implementation of the Principles in Commonwealth countries (including the Plans of Action on the Principles of 2005 and 2008);
- awareness training of government officers and officials, parliamentarians, lawyers and judicial officers on basic constitutional principles, human rights and their primary roles within the constitutional process;
- respect for the independence of parliamentarians and the judiciary in particular (including allocation of adequate funding for the judiciary in line with the Principles);
- transparency of appointments to the public service and to the judiciary based on merit.

The Associations in turn have pledged to continue to promote good governance within their sectors through projects and training courses to enhance integrity and better standards. They also hope that the Commonwealth Secretariat will roll out the Latimer House Toolkit with their assistance in the near future.

BACKGROUND

The Latimer House Working Group is composed of the representatives from four of the original sponsors of the 1998 Latimer House Colloquium: the Commonwealth Parliamentary Association (CPA), the Commonwealth Magistrates' and Judges' Association (CMJA), the Commonwealth Lawyers Association (CLA), and the Commonwealth Legal Education Association (CLEA), together with representation from the Commonwealth Secretariat. The Colloquium produced the Commonwealth

(Latimer House) Guidelines on Parliamentary Supremacy and Judicial Independence which led in turn to the formulation of the Commonwealth (Latimer House) Principles on the Accountability of and Relationship Between the Three Branches of Government, endorsed by Heads of Government in 2003, integrated into the Commonwealth fundamental values in 2005 and which now form part of the Commonwealth Charter.

The Associations have continued to work on the implementation of the Principles in their spheres of activities and in support of the Commonwealth Secretariat's mandate to promote the Commonwealth fundamental values. To this end, at the request of the Commonwealth Secretariat, the four Associations developed a Latimer House Toolkit to enhance the dialogue and understanding between the three branches of government. This Toolkit was launched by Baroness Scotland, Commonwealth Secretary General, in July 2017.

At the Senior Officials of Commonwealth Law Ministers Meeting held in London in October 2016, Senior Officials agreed:

"31. Pursuant to a 2014 Law Ministers' mandate, the Secretariat placed before Senior Officials a paper on the implementation of the Commonwealth (Latimer House) Principles.¹

32. *Whilst Senior Officials considered that the Commonwealth Ministerial Action Group (CMAG) has general oversight of the Commonwealth fundamental political values and principles, the implementation of the Commonwealth (Latimer House) Principles and good practice should remain within the purview of Commonwealth Law Ministers.*

33. *Senior Officials agreed that the Secretariat, with its ability and experience to synthesise issues, and having regard to the sensitivities of member countries, should prepare a discussion paper on the implementation of the Latimer House Principles for submission to the meeting of Law Ministers."*

Whilst a short discussion paper was presented to CLMM in The Bahamas in October 2017, the focus of this paper was the key challenges that had been brought to the attention of the Commonwealth Secretariat where the spirit of the Principles *"are perceived to have been violated or are at risk of being violated, in some instances to the extent that a constitutional crisis or political instability could result if not addressed through a sensitive and inclusive manner, including through dialogue between competing parties and appropriate law reform"*. The four original sponsoring organisations who are members of the Latimer House Working Group namely the Commonwealth Lawyers Association, the Commonwealth Legal Education Association, the Commonwealth Magistrates' and Judges' Association and the Commonwealth Parliamentary Association were not involved in the drafting of the paper which only discussed key challenges at the time, which were identified as:

- a. *"Constitutional or other reforms that could be introduced to prevent the misuse of the power of prorogation;*
- b. *The role of attorneys-general in protecting the judiciary when criticized for a judgment in a manner which undermines public confidence in the judiciary;*

¹ Communiqué from Commonwealth Law Ministers Meeting, Botswana May 2014:

"2. As a paper by the Latimer House Working Group was not presented by Senior Officials to Ministers, due to the fact that Senior Officials could not reach a consensus on the paper, it was agreed that, rather than as a separate agenda item, Ministers could raise the Commonwealth (Latimer House) Principles in their discussions throughout the agenda wherever relevant. Ministers later, during the presentation of the report by the Commonwealth Magistrates' and Judges' Association (CMJA), agreed to mandate the Secretariat to prepare a paper on the implementation of the Latimer House Principles in the Commonwealth for consideration at the next Law Ministers' Meeting. In preparing the paper, the Secretariat should consult widely with member countries and with the Latimer House Working Group."

- c. *Appropriate safeguards, measures and legislative reform to ensure security of tenure for judges and their institutional independence, and to share experiences from their jurisdiction;*
- d. *The importance of participation in democratic processes and in exercising the individual's franchise during an election, along with the responsibility of government and political parties to promote a democratic culture*
- e. *The strengthening of the electoral management bodies (EMB) as a democratic institution, by suggesting measures to ensure their independence and their capacity in terms of human and financial resources to manage and conduct peaceful transparent and credible elections.”²*

The Outcome Statement from the Meeting provided:

“Law Ministers considered a discussion paper on the Commonwealth (Latimer House) Principles. The paper highlighted issues relating to parliamentary democracy, judicial independence and the participation of citizens in the democratic process through elections. Law Ministers emphasized the independence of the judiciary and judicial accountability. Law Ministers also noted that the Secretariat had produced the Latimer House Principles Toolkit and encouraged its work to promote the Principles.”³

Despite the fact that the Commonwealth (Latimer House) Principles (“The Principles”) were made an integral part of the Commonwealth fundamental values in 2005 and are included in the Commonwealth Charter, and some progress has been made (as outlined below) there continue to be a number of challenges in the compliance with these Principles.

It is appropriate 19 years after the Principles were integrated into the fundamental values, that there is a full review of what has happened to date and where the challenges lie. So far, only the Australian Capital Territory has made efforts to implement the Principles within its jurisdiction.

The Coronavirus pandemic which has affected all Commonwealth jurisdictions has highlighted the need to ensure that the rule of law, good governance and democratic principles are respected by all institutions across the Commonwealth whether in times of crisis or not. Emergency legislation for health, social and economic reasons need to be balanced against considerations of access to justice, freedom of expression, freedom of movement, judicial and parliamentary independence. All institutions have a duty to protect the rights of their citizens against abuse and safeguards have to be put in place to ensure that the institutions do not overreach their powers and damage the democratic values and principles that have been hard-earned. The Commonwealth (Latimer House) Principles and subsequent Plans of Action should not be seen merely as an inspirational document but roadmaps to implementation of the Commonwealth fundamental values in every country. The following outline some of the ways in which our four organisations have contributed towards the implementation and the challenges that are continued to be faced in ensuring that the Principles agreed to by Heads of Government are respected.

I. THE THREE BRANCHES OF GOVERNMENT

At the CHOGM in 2018 *“...Heads requested the Commonwealth Secretariat work in partnership with other Commonwealth organisations in promoting dialogue between the three branches of government, including through the full application of the Latimer House Principles Toolkit, which provides a practical guide to enhancing the separation of powers.”⁴*

² LMM(17) 18: The Commonwealth (Latimer House) Principles- A discussion paper.

³ Article 29- Outcome Statement of the Meeting of Commonwealth Law Ministers and Senior Officials, Nassau, The Bahamas, October 2017

⁴ Paragraph 13 Commonwealth Heads of Government Meeting Communiqué, “Towards a Common Future”, April 2018

Unfortunately, the Commonwealth Secretariat were unable to go ahead with the first proposal to “roll out” the Toolkit in 2019 and in 2020 due to COVID 19. The Associations have been working with the Commonwealth Secretariat to roll out the Toolkit in at least one country before the end of the current financial year.

At their meeting in The Bahamas in 2017, the CLMM discussed the challenges faced by Legislatures when prorogation has been used to frustrate votes of no confidence amongst other issues. Parliamentarians must be able to carry out their legislative and constitutional functions without unlawful interference or hindrance. Prorogation should not be used to halt parliamentary oversight of government and public agencies or to hinder the protection of the rights of citizens.

Each new generation of government Officers and Officials, Parliamentarians, lawyers and judicial officers as well as members of civil society should be given awareness training on basic constitutional principles, human rights and their primary roles within the constitutional process as well as the imperatives of, and balance between, the independence and accountability of the Judiciary, Parliament and The Executive.

II. PARLIAMENT AND THE JUDICIARY

It is paramount that the Executive and Legislature respect the Judiciary’s responsibility for the interpretation and application of the law and, equally, that Parliament’s primary function for law making is respected.

Parliaments are encouraged to take effective steps to implement their countries’ international human rights obligations by enacting appropriate legislation in a timely manner and judicial officers play a vital role in ensuring that human rights are respected.

III. INDEPENDENCE OF PARLIAMENTARIANS

The Commonwealth Latimer House Principles, among other things, advocates for the independence of the institution of Parliament to allow Parliamentarians effectively carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference.

The CPA has continued to strengthen the capacity of legislatures in the Commonwealth through the development and delivery of parliamentary strengthening programmes including post-election seminars. These programmes allow parliamentarians to share good practice from other Commonwealth jurisdictions, drawing on a wealth of expertise and experience from across the 180-member national and sub-national Commonwealth legislatures.

In order to enhance the independence of legislatures in the Commonwealth, it is important for the Commonwealth to continue to strengthen democratic culture, governance and institutions through, amongst other things, applying the doctrine of separation of powers between branches of Government and recognising the important role that parliaments play in enhancing democracy and democratic processes.

In 2021, the CPA launched its new online Parliamentary Academy to strengthen and expand opportunities for learning and development within the CPA membership.

IV. INDEPENDENCE OF THE JUDICIARY

4.1 Appointments and Removals of Judicial Officers

Whilst progress has been made in relation to the appointments of judicial officers (judges and magistrates at all levels) across the Commonwealth with the increase in the numbers of independent Judicial Appointments /Services Commissions being set up and more transparency in the appointments systems across the Commonwealth, there continue to be threats in a number of Commonwealth countries of interference by the Executive in the appointments process as well as the removal of judicial officers without consideration of constitutional or international precepts. Appointments must be made in line with the Principles. We would commend the Model Law on Judicial Services Commissions produced by the Commonwealth Secretariat and approved by Commonwealth Law Ministers in 2017 to Commonwealth governments in any revision of the processes currently being used for appointments to the Judiciary. All appointments should be made on merit by an independent process which provides equality of opportunity and with the appropriate consideration given to the need for the progressive attainment of gender equity, and the removal of other factors of discrimination in appointments.

There have been a number of removals of judicial officers which have ignored, the constitutional, and legislative provisions, due process, and this has adversely affected the independence of the Judiciary. In order to fulfil their responsibilities as *“guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchments of good governance”*⁵ the judiciary must be institutionally independent. Judicial officers should only be removed for reasons of incapacity or misbehaviour which clearly renders them unfit to discharge their duties and any proceedings against them must follow due process and constitutional or legislative provisions set down for such removals. Judicial officers, like all other citizens have the right to a fair hearing.

Whilst constitutional provisions may provide security of tenure for judicial officers at the higher level and to protect them from removal of office, those in the lower courts continue to be removed without such protections in many cases. The CMJA, at its Triennial Conference in Brisbane Australia in 2018, adopted *“The Brisbane Declaration on the Independence and Integrity of Magistrates”*⁶, the objective of which was to ensure that the independence of judicial officers at all levels is protected.

4.2 Resources and funding of the Judiciary

The provision of adequate financial resources and autonomy in finance and administration are fundamental to institutional independence. The proper funding and repair of the court estate, the provision of adequate computer systems for courts and court users, and the provision of adequate numbers of court staff, and the training of judicial officers and staff, help access to justice, the rule of law, and the independence of the judiciary. Whilst institutions need to be accountable for the funding allocated any assessment in the allocation of funding must not impact adversely on the independence of the judiciary or the quality of justice.

The CMJA has been concerned with the funding of the Judiciary for many years. In order to safeguard the independence, integrity and accountability of the judiciary, it is imperative that adequate funding is allocated to the judiciary. Whilst there may be reasons for budgetary constraints imposed by the Executive Branch, the judiciary cannot be treated like a department of state.

Limitations imposed on resources allocated to the Judiciary undermine the rule of law and access to justice. Sufficient resources must be allocated to the judiciary in order for it to manage its functions in

⁵ Principles 1, Commonwealth (Latimer House) Principles.

⁶ <https://cmja.org/downloads/judicialindepence/Declaration-LowerCourts.pdf>

an efficient and effective manner. Without adequate funding, access to justice and the right to a fair trial within a reasonable time limit may be jeopardised. The existence of an impartial, honest, and competent judiciary and the observance of the law are essential to economic growth and investment. The Judiciary should have budgetary autonomy so that it can allocate resources as is required to make it more efficient. It should be able to submit its budget directly to parliament and no ministry should be able to decrease budgets allocated by the Legislature.

In July 2020, the CMJA published the “**Commonwealth Principles on the Funding and Resourcing of the Judiciary**”⁷ which will hopefully provide a framework for the Legislature and Executive Branches of State to follow in relation to the funding of the Judiciary and to assist to better understand and support the judiciary in the fulfilment of their functions. The Principles will also provide a guide to the Judiciaries of the Commonwealth in their requests for sufficient funding to fulfil their functions.

Whilst alternatives to the formal structures have been developed thanks to digitalisation and the use of ADR to encourage better access to justice, it is important that such techniques do not compromise the integrity of a trial.

In addition, the reduction of legal aid in some Commonwealth countries has had an adverse effect on access to justice and has also led to more litigants in person (at all levels) appearing in court. This can have an adverse effect on the good administration of justice with judicial officers having to explain procedures more thoroughly than when qualified advocates are present in court.

4.3 The Role of Lawyers

The Principles provide that: “*An independent, effective and competent legal profession is fundamental to the upholding of the rule of law and the independence of the judiciary.*”⁸

In recent years, we have seen a number of attacks on lawyers who are acting in defence of their clients especially those who are human rights defenders. Commonwealth countries are urged to ensure that they comply with the UN Basic Principles on the Independence of Lawyers especially in volatile legal jurisdictions and on human rights issues. Principle 25 of the UN Basic Principles on the Role of Lawyers provides that *professional associations of lawyers shall cooperate with governments to ensure that everyone has equal access to legal services and that lawyers are able without proper interference to counsel and assist their clients in accordance with the law and recognised professional standards and ethics*. Governments have a fundamental duty to ensure that practitioners are not subjected to intimidation through office raids and surveillance, threats through abuse of disciplinary procedures, or physical attacks and imprisonment. Such actions undermine the independence of the profession and the rule of law. The CLA continues to cooperate with national law associations and issue public statements where appropriate jointly with partner organisations, where such issues arise.

V. PUBLIC OFFICE HOLDERS

The Latimer House Working Group welcomed the development of a Model Act on Integrity in Public Life⁹ and Code of Conduct which was formulated in 2017 following regional seminars on the issue. It is paramount that appointments to public office are made on merit through a transparent procedure with set criteria for selection.

⁷<https://cmja.org/downloads/judicialindepence/FUNDING%20AND%20RESOURCING%20OF%20THE%20JUDICIARY%20IN%20THE%20COMMONWEALTH-%20FINAL.pdf>

⁸ VI- Independence of the Judiciary, Commonwealth (Latimer House) Principles.

⁹ https://thecommonwealth.org/sites/default/files/key_reform_pdfs/P15370_1_ROL_Model_Act_Integrity.pdf

VI. ETHICAL GOVERNANCE

Paragraph 6 of the Latimer House Principles provides that *‘Ministers, members of Parliament, judges and public office holders in each jurisdiction should respectively develop, adopt and periodically review appropriate guidelines for ethical conduct.*

Such guidelines are designed with a view to enhancing transparency, accountability and public confidence and are incorporated in codes which are now the norm in Commonwealth Member States. However, they are ineffective if the public are unaware of them and adequate resources are not provided for their oversight and enforcement. Provisions requiring the disclosure and registration of interests and assets together with adequate public access are an essential part of the codes but need the support of wider provisions for the registration of beneficial ownership if they are to be fully effective.

The Latimer House Working Group welcomes the work of the Commonwealth Secretariat:

1. In providing technical assistance and development support in the Caribbean and Commonwealth Africa in establishing integrity commissions and national anti-corruption agencies together with training centres to build their effectiveness and to promote inter-agency collaboration and learning;
2. in developing the Commonwealth Anti-Corruption Benchmarks, with a view to their being presented to the CHOGM in Rwanda in June 2022. Members of the Latimer House Group were privileged to host a side event on the Benchmarks at the Commonwealth Law Conference in The Zambia in April 2019 and participated in the meeting to review the Draft Benchmarks in May 2019 and contributed to the final version placed before Law Ministers in November 2019.
3. In completing a detailed study of anti-corruption standards in member countries.¹⁰ It is to be hoped that the results of the study will assist member countries in assessing their progress in combating corruption in the various sectors in which it occurs (See Oversight of Government, para IX).

VII. ACCOUNTABILITY MECHANISMS

Judicial Accountability: The CMJA has continued to be the repository of the Codes of Conduct for Judiciaries across the Commonwealth which are used by Commonwealth judiciaries to review or update existing codes. It is essential that the judiciaries have a sense of ownership of the codes. The CMJA has continued to work on anti-corruption measures and are currently partnering with UNODC on the Global Judicial Network in supporting measures to raise standards within the judiciary across the Commonwealth and contributed to the Commonwealth Anti-Corruption Benchbook due to be placed before the CHOGM in Kigali in June 2022.

Judicial Review: This is an important tool for the public to ensure that both the Executive and Legislature are held to account for their actions and is an essential element of modern democracies in order to avoid abuse of process.

¹⁰ [Commonwealth anti-corruption initiative pushes progress on SDGs](#), 10 December 2019

VIII. THE LAW-MAKING PROCESS

The Commonwealth (Latimer House) Principles call for adequate parliamentary examination of proposed legislation, and public input into the legislative process. The Latimer House Principles also advocates for Parliaments to consider, where relevant, international instruments or regional conventions agreed by their governments.

In line with these principles the CPA Recommended Benchmarks for Democratic Legislatures, published in 2006 and revised in 2018 stress the importance of public input into the legislative committee process, as well as the provision of information to the public a timely manner regarding matters under consideration by the Legislature.

Under the Commonwealth Partnership for Democracy Project funded by the UK FCO as Chair in Office of the Commonwealth, the CPA has continued to work with a number of legislatures assisting them to conduct self-assessment using the Recommended Benchmarks for Democratic Legislatures which provide important standards on how Parliament should function and operate. These Benchmarks are therefore fundamental to the wider values and principles of the Commonwealth Charter.

IX. OVERSIGHT OF GOVERNMENT

Zero Tolerance of Corruption. Promoting zero tolerance is vital to good government. Without it here can be no public confidence in the integrity of the three branches of power.¹¹

Although the monitoring of corruption and the ranking of countries based on perception of levels of corruption prevailing in them has raised awareness of the problem of corruption generally, it is important to improve the methodological basis of such quantitative assessment and to chart the progress of individual countries on a sectoral basis thereby indicating the sectors where progress has or has not been made. It is to be hoped that the Commonwealth Secretariat's detailed study of anti-corruption standards in member countries¹² will assist member countries in achieving this objective.

Bearing in mind the "supply/demand" dimension of corruption in international business transactions, it would be useful to rank multinational corporations and their subsidiaries in terms of their track records on corruption, thus providing exposure of those known to be engaging in corrupt practices.¹³

Freedom of Expression. The Latimer House Principles refer to freedom of expression as encouraging the full participation of citizens in the democratic process. Furthermore 'Government's transparency and accountability is promoted by an independent and vibrant media which is responsible, objective and impartial and which is protected by law in its freedom to report and comment upon public affairs'. To further elaborate these objectives, and in the light of persistent attacks on journalists where perpetrators have not been brought to justice and other threats to press freedom including overbroad security legislation, a working group of Commonwealth organizations (including three members of the Latimer House Working Group) adopted a set of **Commonwealth Principles on freedom of expression and the role of the media in good governance** in April 2018. These Principles seek to achieve a balance between the protection of media freedom, the safety of journalists and the responsibility of the media, for example in not undermining the authority and independence of the judiciary.

In February 2021, the Senior Officials of Law Ministers Meeting (SOLM) gave the Commonwealth Secretariat a mandate to set up an expert working group (EWG) to review the substantive issues behind

¹¹(Practitioners Handbook p.49).

¹² See 10 above

¹³ (Practitioners Handbook page 137).

these media principles and make appropriate recommendations. The EWG met nine times in the second half of 2021 and produced a revised version of the media principles which is to be submitted to SOLM and Law Ministers for their review and approval at their next meetings later this year. As these meetings will now take place after this year's CHOGM, which is to be held in Kigali in June 2022, the Latimer House Working Group hope that, in the CHOGM communiqué, Heads will welcome the progress that has been made by the EWG and look forward to considering the media principles at the next CHOGM after Law Ministers have reviewed them. It is hoped that the need for such a Commonwealth statement of media principles will be endorsed by Heads of Government and that a final text will, in due course, be endorsed by Heads through processes analogous to those which led to the endorsement of the Latimer House Principles.

X. CIVIL SOCIETY

In addition, at the Latimer House Colloquium in Edinburgh in 2008, it was suggested that a Standing Committee of the four Associations should be set up *“for the purpose of gathering relevant information, reporting on implementation of the Principles, best practice and areas of concern to inform the deliberations of the Commonwealth and the Commonwealth Ministerial Action Group...”*¹⁴ This Standing Committee has not been set up. However, it is proposed that the CMAG might consult more widely through written and oral submissions with accredited Commonwealth Associations on issues that arise in relation to violations of the Commonwealth fundamental values than it currently does to ensure that it is fully cognisant of all aspects of such violations.

In a world where resources are increasingly scarce, civil society organisations can play an important role in informing decision-making processes at community, national, regional and international level. A user-friendly version of the Principles is still an ambition of the Latimer House Working Group so that the Commonwealth fundamental values can be included in civic education in all tiers of education.

GOING FORWARD

The Group would highly recommend that there should be a comprehensive review of the implementation of the Commonwealth (Latimer House) Principles. We would urge the Commonwealth Heads of Government to mandate the Commonwealth Secretariat through the Commonwealth Law Ministers to undertake this review and consider further steps to enhance respect for the Principles, including through the roll out of the Latimer House Toolkit.

April 2022

¹⁴ 1.1- Action, Edinburgh Plan of Action on the Implementation and Development of the Latimer House Principles July 2008.